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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

15 JESS ELIJIO CARRANZA,
16 JIMMY CARTER KIM,
Plaintiffs/Petitioners,

Case No. 2:20-cv-01586-GMN-DJA

**DEFENDANT KOEHN'S MOTION TO
STAY EXPEDITED DISCOVERY**

Defendant,¹ Warden Brian Koehn,² through counsel, moves to stay the Magistrate Judge's November 9, 2020 Order requiring him to respond to Plaintiffs' burdensome requests for

¹ The Court dismissed Plaintiffs' habeas claim on October 16, 2020. (Doc. 24.)

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1 production and allow an in-person visit by Plaintiffs' expert on an expedited basis before the
 2 parties met and conferred pursuant to Rule 26(f), before either Warden Koehn or the Magistrate
 3 Judge had seen the actual discovery requests, and without providing Warden Koehn an
 4 opportunity to fully and fairly brief the issue before being ordered to provide the discovery.
 5 Warden Koehn is entitled to seek review of that Order, and is filing an Objection concurrently
 6 with this Motion. But, absent a stay of discovery, Warden Koehn will be required to respond to
 7 Plaintiffs' overbroad and unduly burdensome discovery requests before the parties have even
 8 finished briefing on Warden Koehn's Objection to the November 9 Order, let alone before the
 9 Court has ruled on that Objection.³

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. FACTUAL AND PROCEDURAL BACKGROUND**

12 On October 30, 2020, Plaintiffs filed a two-paragraph Motion for Scheduling Order,
 13 setting out an abbreviated procedural history and asking the Court to issue a Scheduling Order
 14 pursuant to Local Rule 16-1(b). (Doc. 30.) On November 3, 2020, the Magistrate Judge set a
 15 discovery hearing for November 9, 2020. (Doc. 31.) The Magistrate Judge did not order the
 16 parties to meet and confer before the hearing, and Plaintiffs made no attempt to do so.

17 Rather, Plaintiffs requested at the hearing—for the first time—an expedited discovery
 18 schedule that would require Warden Koehn to respond to 20 requests for production within two
 19 weeks and allow an in-person site visit by Plaintiffs' expert within 30 days. The details of the
 20 November 9 proceedings are set forth in Warden Koehn's Objection to Order Allowing Expedited
 21 Discovery (Doc. 36), and are incorporated herein by reference. The Magistrate Judge failed to
 22 analyze whether good cause existed for Plaintiffs' burdensome and expedited discovery requests.
 23 Instead, he ordered Warden Koehn to respond to the requests for production and allow the in-

24
 25 ³ Counsel for Warden Koehn informed the Magistrate Judge during the November 9, 2020
 26 discovery hearing of Warden Koehn's intent to object to and seek a stay of the Order. The
 27 Magistrate Judge confirmed that if an objection is pending before the District Court and Warden
 28 Koehn has moved for a stay, the Magistrate Judge would not take the position that Warden Koehn
 "has somehow violated [his] order" by not having provided the requested discovery while the
 District Judge is deciding whether or not to allow it.

1 person site visit on an expedited basis before the parties met and conferred pursuant to Rule 26(f),
 2 before either Warden Koehn or the Magistrate Judge had seen the actual discovery requests, and
 3 without providing Warden Koehn an opportunity to fully and fairly brief the issue before being
 4 ordered to provide the discovery. Warden Koehn is filing an Objection to the November 9 Order
 5 pursuant to 28 U.S.C. § 636(b)(1)(A), Fed. R. Civ. P. 72(a), and LR IB 3-1(a) concurrently with
 6 this Motion. (Doc. 36.)

7 **II. LEGAL ARGUMENT**

8 “The district court has wide discretion in controlling discovery.” *See Little v. City of*
9 Seattle, 863 F.2d 681, 685 (9th Cir. 1988) (holding the district court did not abuse its discretion in
 10 staying discovery “until the issue of immunity was decided,” which “further[ed] the goal of
 11 efficiency for the court and litigants”); *see also Landis v. North Am. Co.*, 299 U.S. 248, 254–55
 12 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to
 13 control the disposition of the causes on its docket with economy of time and effort for itself, for
 14 counsel, and for litigants.”). To determine whether a stay is appropriate, the Court must consider
 15 “the possible damage which may result from the granting of a stay, the hardship or inequity which
 16 a party may suffer in being required to go forward, and the orderly course of justice measured in
 17 terms of the simplifying or complicating of issues, proof, and questions of law which could be
 18 expected to result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). These
 19 factors weigh in favor of a stay of the discovery required by the November 9 Order.

20 **A. No Damage Will Result From a Stay.**

21 After reviewing the evidence submitted by the parties—including a detailed declaration
 22 from Warden Koehn describing the extensive measures NSDC has undertaken to mitigate the risk
 23 of COVID-19—the Court granted Defendant Koehn’s motion seeking dismissal of the habeas
 24 portion of Plaintiffs’ Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and
 25 Complaint for Declaratory and Injunctive Relief (“Complaint”). (Doc. 24.)⁴ The Court allowed
 26

27 ⁴ The Court denied the Motion to Dismiss to the extent it sought dismissal of the claims for
 28 declaratory and injunctive relief, but Warden Koehn did not challenge those claims in the Motion
 to Dismiss, which was filed in response to the Order that required Warden Koehn to respond to

1 Plaintiffs' claims for declaratory and injunctive relief to proceed, but gave no indication that they
 2 needed to proceed on an expedited basis. (Id.) Moreover, although Plaintiffs stated at the
 3 November 9 discovery hearing that they intend to move for preliminary injunctive relief, they
 4 have yet to do so, even though this lawsuit has been active for nearly three months.

5 The fact that Plaintiffs want to have an expert conduct an in-person site inspection before
 6 they file their motion for preliminary injunctive relief suggests that even Plaintiffs are not certain
 7 whether current conditions at NSDC warrant such relief. In other words, Plaintiffs appear to want
 8 to engage in a fishing expedition to determine whether to file their motion. As set forth in more
 9 detail in Warden Koehn's Objection to Order Allowing Expedited Discovery (Doc. 36), this is not
 10 a proper reason to order expedited discovery. And the fact that Plaintiffs have waited this long
 11 suggests they will not be harmed by a temporary delay while the Court decides whether to allow
 12 such discovery.

13 **B. Warden Koehn Will Be Prejudiced By Being Required to Proceed With
 14 Expedited Discovery.**

15 Plaintiffs' requests for productions—which the Magistrate Judge did not review prior to
 16 ordering Warden Koehn to respond to them—are compound, resulting in Warden Koehn having
 17 to respond to significantly more requests than Plaintiffs claim. The requests are also overbroad
 18 and unduly burdensome, and are not narrowly tailored to allow Plaintiffs to obtain preliminary
 19 injunctive relief (nor can they be, as there is no such motion pending at this time); instead, they
 20 improperly go to the merits of Plaintiffs' claims, and even beyond them. *See Am. LegalNet, Inc. v.*
Davis, 673 F. Supp. 2d 1063, 1069 (C.D. Cal. 2009).

21 Plaintiffs are two federal pretrial detainees in the legal custody of the United States
 22 Marshals Service (“USMS”) and currently detained at NSDC. (Doc. 1.) They assert claims only
 23 on behalf of themselves, and are not seeking to certify a class action. (Id.) Nevertheless, Plaintiffs
 24 seek “NSDC’s COVID-19 response plan and any plans, protocols, or documents that bear on
 25 NSDC’s compliance with CDC guidance”; [d]ocuments regarding protocols for death reviews for

26
 27 the Petition, but did not require a response to the Complaint at that time. (Doc. 5.) Warden Koehn
 28 filed his Answer to the Complaint on November 9, 2020. (Doc. 33.)

1 COVID-19 cases and any such completed reviews”; “[d]ocuments regarding the current number
 2 of detainees in each unit and the maximum capacity of each of those units”; “[d]ocuments
 3 regarding the total number of working sinks, toilets, showers, telephones, and computers in each
 4 unit”; “[a]ll grievances, kites, or internal complaints that have been filed within the facility
 5 relating to COVID-19 from March 17, 2020, to present and all responses thereto”; and
 6 “[d]ocuments regarding which correctional officers and any other NSDC staff worked in which
 7 units and when from August 26, 2020 to present.” (Doc. 36, Ex. 3.)

8 The burden imposed by these overbroad and compound requests is exponentially
 9 increased by the fact that the Magistrate Judge required Warden Koehn to respond to them within
 10 only 14 days. Under the current schedule, Warden Koehn is required to serve responses to
 11 Plaintiffs’ written discovery requests by November 23, 2020, the same day his Objection to the
 12 November 9 Order is due. *See* 28 U.S.C. § 636(b)(1) (requiring objections within 14 days); Fed.
 13 R. Civ. P. 72(a) (same); LR IB 3-1(a) (same). Warden Koehn is further required to allow an in-
 14 person site visit by December 9, 2020, two days after Plaintiffs’ response to the Objection is due.
 15 *See* LR IB 3-1(a) (requiring any responses to the objections within 14 days of service of the
 16 objections). A brief stay of the November 9 Order until the Court has ruled on Warden Koehn’s
 17 Objection will protect Warden Koehn’s right to due process and minimize the burden on Warden
 18 Koehn by allowing him to fully and fairly brief these issues without having to gather burdensome
 19 information sought by Plaintiffs on an expedited basis and prepare for and potentially participate
 20 in the site visit (to the extent the Court allows Warden Koehn to file a reply in support of the
 21 Objection, *see* LR IB 3-1(a)) at the same time.

22 **C. The Orderly Course of Justice Will Be Served By a Brief Stay.**

23 As noted above, Warden Koehn has a right to seek review by the District Judge of the
 24 Magistrate Judge’s Order. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); LR IB 3-1(a).
 25 Absent a stay, Warden Koehn will be effectively deprived of this right. Moreover, resolution of
 26 Warden Koehn’s Objection to the November 9 Order could eliminate the need for expedited
 27 discovery. Thus, allowing the Court to rule on the Objection before requiring Warden Koehn to
 28 respond to expedited discovery will promote the orderly course of justice.

III. CONCLUSION

For the foregoing reasons, Warden Koehn respectfully requests a brief stay of discovery until the Court has ruled on his Objection to the November 9 Order.

DATED this 23rd day of November, 2020.

STRUCK LOVE BOJANOWSKI & ACEDO, PLC

By /s/ Jacob B. Lee

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CERTIFICATE OF SERVICE

2 I hereby certify that on November 23, 2020, I electronically transmitted the attached
3 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of
4 Electronic Filing to the following CM/ECF registrants:

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